

In The Matter Of:
Hodell-Natco Industries, Inc. v.
SAP America, Inc., et al.

Dale Van Leeuwen
July 18, 2012

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Original File 07.18.12 Hodell-Natco Industries v. SAP America__et al. Witness Dale Van Leeuwen.txt

Min-U-Script® with Word Index

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES,
INC.,

Plaintiff,

vs.

SAP AMERICA, INC., SAP AG,
LSI-LOWERY SYSTEMS, INC.,
THE IBIS GROUP, INC.,

Defendants.

STATE OF ILLINOIS

COUNTY OF COOK

SS.

No. 1:08-cv-02755

The videotaped deposition of DALE Van LEEUWEN
taken before April M. Metzler, Certified Shorthand
Reporter and Certified Realtime Reporter, at 191 North
Wacker Drive, Suite 3700, Chicago, Illinois, commencing
at 8:49 a.m. on the 18th day of July, A.D., 2012.

Dale Van Leeuwen - July 18, 2012

14

1 that period of time.

2 Q. What did the non-compete preclude you from
3 doing?

4 A. Direct competition of services and sales that
5 LSi provided, which was, you know, basically selling
6 enterprise resource planning solutions and consulting in
7 a direct competitive way to LSi.

8 Q. Did you --

9 A. It prohibited me from, you know, talking to or
10 accessing their customer base, so ...

11 Q. Prior to -- prior to working with LSi, you
12 were the owner of a company called IBiS; is that
13 correct?

14 A. The company's name, legal name was the
15 Integrated Business Solutions Group, Incorporated, which
16 was referred to as The IBiS Group, and I was --

17 Q. And what did IBiS do?

18 A. IBiS was a valuated reseller for what was
19 Software Solutions, then changed names to Aperum, and
20 ultimately was acquired by Infor. The products that we
21 built our solutions on were an application called FACTS,
22 F A C T S. It was the application that Hodell-Natco was
23 running for years.

24 Q. When did you form IBiS?

25 A. I formed IBiS in it -- I'm sorry -- in 1994.

Dale Van Leeuwen - July 18, 2012

15

1 Q. Were you the -- you said you were an owner of
2 the company?

3 A. I was the sole owner.

4 Q. Sole owner?

5 A. (Nodding.)

6 Q. Are you familiar with a company by the name of
7 Hodell-Natco?

8 A. I am.

9 Q. How so?

10 A. Hodell-Natco had acquired and implemented
11 facts through a company by the name of SofTech. SofTech
12 was a former employee. I was employed by SofTech prior
13 to starting The IBiS Group. And SofTech ultimately went
14 out of -- went out of business, and I went to work to
15 provide services surrounding the support and ongoing
16 delivery of solutions for Hodell-Natco after SofTech
17 went out of business.

18 Q. And was that by forming IBiS?

19 A. Yes, sir.

20 Q. Okay. When Hodell-Natco acquired FACTS
21 through SofTech, were you employed by SofTech at the
22 time?

23 A. I was, yes.

24 Q. And were you involved in the implementation of
25 FACTS --

Dale Van Leeuwen - July 18, 2012

16

1 A. I was.

2 Q. -- at Hodell?

3 A. I was.

4 Q. Do you recall when that was?

5 A. You're going to make me age myself.

6 (Laughter.)

7 BY THE WITNESS:

8 A. No, I don't know that I could be exact there.
9 I would say it was probably in early '90s, you know,
10 like '91, something like that, early '90s. And that is
11 strictly a guess on my part.

12 Q. I thought you said that you formed IBiS --

13 A. In '94.

14 Q. Oh, I thought you said '84, okay.

15 A. I'm sorry. I'll speak more clearly.

16 Q. So Hodell implemented FACTS in the early 1990s
17 and was serviced by SofTech?

18 A. Initially, yeah.

19 Q. Initially.

20 And then SofTech went out of business, and you
21 formed IBiS as a continuation of the service to Hodell?

22 A. Well, it wasn't just for service to Hodell.
23 There was -- there was -- SofTech left a lot of
24 customers in a very, very bad state, when they went out
25 of business; it wasn't by design for them to go out of

Dale Van Leeuwen - July 18, 2012

17

1 business.

2 So I formed a relationship with Software
3 Solutions, became an affiliate and was able to then
4 provide services and sales of the FACTS application.
5 Many of the customers that were left stranded, if you
6 will, from the result of SofTech going out of business,
7 I had acquired as customers, and Hodell was one of them.

8 Q. Were you personally involved with the
9 implementation of FACTS at Hodell?

10 A. Yes.

11 Q. Okay. And what was your --

12 A. I was one member of a team.

13 Q. Okay. And what was your role with the
14 implementation of FACTS at Hodell-Natco?

15 A. I was the implementation manager.

16 Q. And what did that involve?

17 A. Project management. The -- from an
18 application perspective, ensuring that the business
19 needs and requirements were configured appropriately
20 within the business application, and that the toggle
21 switches, controls, if you will, were defined in such a
22 way to where they could operate their business.

23 (Discussion off the record.)

24 BY THE WITNESS:

25 A. It also included managing data conversion,

Dale Van Leeuwen - July 18, 2012

18

1 ensuring that that was done. Not that I performed the
2 data conversion itself, but, you know, managing, having
3 the data conversion done, ensuring that the hardware and
4 operating system environment that peripheral devices all
5 had proper access -- printers, workstations,
6 et cetera -- that there was a successful implementation
7 of the application into their business. That was my
8 role.

9 Q. As part of your employment with SofTech, did
10 you form an understanding as to why Hodell-Natco was
11 acquiring and implementing FACTS?

12 A. Yes.

13 Q. What was your understanding as to why?

14 A. Hodell-Natco, if you're going to limit it to
15 just that window of time, they were running on an
16 application called FastPak. FastPak was developed by a
17 company out of California, very much faster, specific
18 vertical application.

19 Hodell-Natco, based on their business model,
20 which dealt with a lot of repackaging of products and so
21 forth, the FastPak application, as much as it was for
22 faster industry distributors, really didn't handle that
23 aspect of their business well. FACTS was a much more
24 robust solution than the FastPak application at that
25 point in time for managing their type of fastener

Dale Van Leeuwen - July 18, 2012

19

1 environment.

2 Q. Do you recall who you worked with at
3 Hodell-Natco on the FACTS implementation?

4 A. Yeah. I worked with Otto Reidl directly.
5 You're talking about Hodell-Natco employees?

6 Q. Yes.

7 A. Also with Mark. I would say between Otto and
8 Mark, they were probably my primary contacts and people
9 I worked with. Otto was very much involved during the
10 implementation.

11 Q. Other than the implementation -- the initial
12 implementation of FACTS at Hodell -- did you maintain an
13 ongoing relationship with Hodell after the
14 implementation concluded?

15 A. Yes.

16 Q. In what respect?

17 A. The implementation of any ERP system is really
18 the start of a long relationship typically. It is a
19 marriage. Business changes. The application changes.
20 Technology changes. And the relationship with
21 Hodell-Natco, I think, we both enjoyed the fact that
22 Hodell was a very impressive organization. They grew
23 substantially through acquisition. Their needs for
24 technology, to continue to be part of that strategy,
25 were always on the forefront.

Dale Van Leeuwen - July 18, 2012

20

1 So supporting that environment, supporting as
2 they acquired a new division or company, the conversion
3 from many times, other instances, of FastPak to FACTS,
4 was something that we did. We trained the users. We
5 provided a new infrastructure, servers, et cetera, to
6 support the growth within the organization.

7 We deployed new releases of FACTS. We
8 customized the application specific to Hodell
9 requirements, as their business changed.

10 We implemented warehouse management solutions,
11 which are ancillary to the core ERP, but further added
12 to their technology platform.

13 Q. Did you -- as part of that ongoing
14 relationship, did you become aware of Hodell's
15 day-to-day business practices and activities?

16 A. Absolutely.

17 Q. And what was your understanding of -- as their
18 day-to-day operations?

19 A. Day-to-day operations at Hodell? They're a
20 very master fastener distributor. Those operations
21 include the acquisition of plain material to be sent out
22 for secondary process, for plating, repackaging of that
23 material into specific pack sizes, to meet the needs of
24 their customers and other fastener companies that buy
25 from them.

Dale Van Leeuwen - July 18, 2012

27

1 were offered by Software Solutions that would have
2 allowed them, you know, some discounting and so forth
3 for staying in the family. So that was -- that was
4 really kind of the path that we had -- we had talked
5 about walking.

6 And, again, there wasn't -- this wasn't an
7 urgent thing. This wasn't an epiphany. It wasn't an
8 overnight we-have-to-do-this type of a thing, but more
9 looking to the future.

10 So that was -- that was really the direction
11 we were ultimately going. It became obvious that
12 Software Solutions, through changing their name to
13 Aperum and the change in management, that they were
14 positioning themselves to be acquired. Otto and I
15 talked about that. There are certain risks associated
16 with -- any time that that type of thing takes place.
17 You know, is the directions, the focus of, you know, the
18 application going to stay the same?

19 And we were also waiting for TakeStock to
20 mature to a certain level, because it was a newer
21 application. It didn't necessarily have the depth of
22 process at that particular point in time, okay, so it
23 was just something we were just kind of waiting to -- to
24 come to fruition. There was no sense of urgency.

25 I received a phone call, I want to say, in

Dale Van Leeuwen - July 18, 2012

28

1 2004 -- in the spring of 2004 from Otto that he had been
2 approached by American Express, and American Express was
3 promoting a new SAP product called Business
4 All-In-One -- or Business One. I'm sorry.

5 That they had come in and -- and basically
6 given an overview of the application. I don't know at
7 that point if they had actually done a demonstration or
8 if this was just that they had come in and talked with
9 them. But Otto was very, very excited about it.

10 He -- you know, obviously the SAP name, the
11 American Express name was very intriguing to him. And
12 he basically directed me to as -- again, as his partner,
13 to drilldown on to the application and maybe this was
14 something that because we were in a position of really
15 wanting to adopt that next level of technology, as well
16 within our portfolio, that we should -- we should take a
17 look at that application as well.

18 Q. Okay. Did you follow-up on -- on Otto Reidl's
19 request?

20 A. I did.

21 Q. And what did you do in that respect?

22 A. SAP had a fairly significant marketing
23 campaign strategy push going on to -- to acquire new
24 business partners, to bring them into the -- their
25 ecosystem, establish new VARs to go after vertical

Dale Van Leeuwen - July 18, 2012

25

1 it wasn't a revolutionary thing. It was an evolutionary
2 thing.

3 We saw that, you know, through growth that
4 this was going to become limiting, so we started a very
5 cursory discovery process with TakeStock, et cetera.

6 I would say that when it -- you know, when we
7 first started talking about it again in the early 2000
8 period, they were probably in the 70-, 80-user range,
9 something like that, maybe a little bit less than that,
10 but I -- I'll be quite honest, I don't remember at what
11 date certain acquisitions took place that added users to
12 the environment.

13 But, you know, they were -- they were over 75
14 users for sure. And when we first started talking about
15 it, when we got to the point of, you know, looking at
16 ultimately the solution of SAP, I believe, they were --
17 they were well over 100- -- 120 users or something of
18 that nature.

19 Q. Okay. You were talking a little bit about the
20 progressive nature of Hodell's decision to fit -- to
21 visit whether it needed to replace FACTS. And I want
22 to -- I want you to kind of explain to me how that
23 conversation took place over the period of time between
24 when, I guess, it first began to get discussed to when a
25 decision was finally made to move on.

Dale Van Leeuwen - July 18, 2012

26

1 A. Okay, yeah. Again, there was an affinity, I
2 believe, to -- to the Software Solution, slash, Aperum
3 product. You know, FACTS had done very well for
4 Hodell-Natco, and some of its limitations were really
5 around the database and the inability to get some of the
6 analytic information out of the system from a daily
7 operating -- day-in/day-out operating environment that
8 would satisfy their needs. It wasn't progressive. But
9 it certainly satisfied their initial requirement --
10 their immediate requirements.

11 So it was more, you know, we are scaling. We
12 are growing, as an organization, in users. We want to
13 participate in deeper analytics. The technology within
14 FACTS was certainly antiquated. It was developed in the
15 mid-'80s. So from a technology perspective, it wasn't
16 as progressive as some of the more current applications
17 at the time.

18 So TakeStock was the name of the application
19 that then, again, SSI, Software Solutions, ultimately
20 Aperum, had developed as really its, kind of, next
21 generation or next level of application as a relational
22 database progress. It was designed and made for scaling
23 to a much -- a much larger user base and number of users
24 operating.

25 There were technology programs in place that

Dale Van Leeuwen - July 18, 2012

27

1 were offered by Software Solutions that would have
2 allowed them, you know, some discounting and so forth
3 for staying in the family. So that was -- that was
4 really kind of the path that we had -- we had talked
5 about walking.

6 And, again, there wasn't -- this wasn't an
7 urgent thing. This wasn't an epiphany. It wasn't an
8 overnight we-have-to-do-this type of a thing, but more
9 looking to the future.

10 So that was -- that was really the direction
11 we were ultimately going. It became obvious that
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13 Aperum and the change in management, that they were
14 positioning themselves to be acquired. Otto and I
15 talked about that. There are certain risks associated
16 with -- any time that that type of thing takes place.
17 You know, is the directions, the focus of, you know, the
18 application going to stay the same?

19 And we were also waiting for TakeStock to
20 mature to a certain level, because it was a newer
21 application. It didn't necessarily have the depth of
22 process at that particular point in time, okay, so it
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Dale Van Leeuwen - July 18, 2012

28

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15 wanting to adopt that next level of technology, as well
16 within our portfolio, that we should -- we should take a
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18 Q. Okay. Did you follow-up on -- on Otto Reidl's
19 request?

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23 campaign strategy push going on to -- to acquire new
24 business partners, to bring them into the -- their
25 ecosystem, establish new VARs to go after vertical

Dale Van Leeuwen - July 18, 2012

29

1 markets and so forth.

2 I had -- I had some conversation -- I was in,
3 actually, some conversation with Dan Lowery at the time
4 about, you know, whether it made sense for us to, you
5 know, look at that particular application.

6 I was -- I was -- at the time president of the
7 ASPA, which was the Aperum Partners Solution
8 Association. So from a FACTS -- the FACTS community of
9 resellers, if you will, I ran that -- that organization
10 and knew Dan very well through that organization.

11 I knew his frustration was similar to mine,
12 and from a technology perspective, you know, we needed
13 to -- we needed to look at something that was
14 up-and-coming.

15 So I reached out to Dan, and we jointly -- he
16 helped me fund a trip down to Atlanta where I met with
17 SAP. I met with Ralf Mehnert, with Chris Robinson. I
18 believe Dan Kraus was there. And basically resulting
19 from the conversations that I had with Dan Lowery,
20 with -- with Otto Reidl, I had put together a list of
21 questions that I had specific to the application and its
22 capability.

23 I sat down and went through that -- that list,
24 which ultimately became, really, the basis from which we
25 established what needed to be built out to establish and

Dale Van Leeuwen - July 18, 2012

30

1 build in InFlight Enterprise.

2 So it included questions, you know, the
3 capability of the application from a functional
4 perspective. It included scalability of the
5 application, database technology. You know, again, we
6 were -- we were looking for an application to utilize as
7 the foundation for building our next solution.

8 And so I had that -- that flight down to
9 Atlanta in, like I said, the spring of 2004. I came
10 back and, you know, I reported to Dan Lowery my
11 findings. I felt that, you know, based on the energy
12 and the information that I had collected that, you know,
13 this would be a good platform for us to move and expand
14 upon, you know, our user base.

15 With the FACTS application, you know, we were
16 really limited from between five users to about 45 to 75
17 users. That was kind of our sweet spot, from a selling
18 perspective.

19 Now, there were customers that were running
20 with -- with a larger number of users than that, and it
21 successfully ran larger companies than that. But from a
22 selling perspective, that was kind of our sweet spot.
23 We were looking to expand that to include, you know,
24 large organizations.

25 Q. You mentioned something about SAP looking to

Dale Van Leeuwen - July 18, 2012

35

1 you to build a micro-vertical fastener solution?

2 A. That is correct.

3 Q. But once you explained to them your business
4 model and kind of your sweet spot, then they did become
5 interested in a micro-vertical for the fastener industry
6 or -- or -- is that incorrect?

7 A. That is correct; that is correct.

8 Q. Okay.

9 A. And the same applied for LSi, right, they
10 weren't necessarily looking for a company to build-out
11 an equipment rental solution, as much as once they
12 identified that that was what LSi's focus was, was
13 equipment rental that they became very interested in a
14 solution built out using Business One as the platform
15 for that particular vertical market.

16 Q. You mentioned something about a list of
17 questions you had for that meeting with SAP in the
18 spring of 2004?

19 A. Yes.

20 Q. How was that list of questions compiled?

21 A. I had a document, a Word document that I had
22 put together prior to going down there. I was looking
23 for a very specific capability within the application
24 and just to identify the depth of process and capability
25 within the application.

Dale Van Leeuwen - July 18, 2012

36

1 Q. Do you still have that document?

2 A. It would have been one of the documents -- if
3 I still have it, it would be one of the documents
4 related around the InFlight development solution. And,
5 again, I'm happy to look for that. If I have it, I'll
6 provide it.

7 Q. If you could try to locate that, I would
8 appreciate that.

9 A. Sure.

10 Q. The actual formation of that list, how did you
11 go about preparing the actual questions you had? I
12 mean, what were the questions based on?

13 A. They were based on my knowledge of what I was
14 looking to accomplish for the vertical market that it
15 serves -- served. It could be a question as simple as,
16 you know, are there customer partners related to
17 internal partners? You know, do you provide for
18 secondary processing? Is there a request-for-quote
19 process built into the application? I was looking for
20 the depth of process and how close it would align to
21 what we would require to meet the requirements of our
22 vertical industry.

23 Q. Were any of the questions on that list
24 specific to Hodell-Natco's search for software to
25 replace FACTS?

Dale Van Leeuwen - July 18, 2012

37

1 A. Again, because we serviced the same industry
2 that they operated in, yes, they would have been
3 directly -- they were not specifically requested of
4 Hodell-Natco, as much as they would have been a
5 requirement to meet their needs as an organization.

6 Q. Do you recall what questions those would have
7 been?

8 A. Again, do you provide secondary processing,
9 lot control, costing-type questions? Standard pack
10 sizes, multiple units of measure? All of those would
11 have been questions I would have asked. And those are
12 very specific to not just Hodell-Natco, but to the
13 industry as a whole, but certainly a requirement of
14 Hodell-Natco.

15 Q. Did you do -- were you involved at all with,
16 for lack of a better term, pre-qualifying SAP Business
17 One as a potential option for Hodell-Natco specifically?

18 A. Yes.

19 Q. And in what respect?

20 A. Once -- once I had come back and we had
21 identified, you know, those areas that the application
22 fit well and those areas where it would require
23 development to meet the needs for the specific industry,
24 I had a series of conversations with Dan, with -- with
25 Otto in regards to, you know, what those -- what those

Dale Van Leeuwen - July 18, 2012

43

1 MR. LAMBERT: Certainly.

2 THE WITNESS: Thank you.

3 (A short break was had.)

4 BY MR. LAMBERT:

5 Q. When we left off, you said something about how
6 Otto Reidl expressed to you that he expected the
7 inter- -- or expected to need at least 300 users over
8 the useful life of the replacement software?

9 A. Mm-hmm.

10 Q. Do you recall that?

11 A. Yes, yes, I do.

12 Q. Did you do anything to assure Mr. Reidl that
13 if he selected SAP Business One, the software would be
14 able to handle that kind of user capacity?

15 MR. STAR: Objection to the form. You can answer.

16 BY THE WITNESS:

17 A. Okay. The things that I did to ensure that
18 were not just for Hodell, but also for myself. Again,
19 we were looking for a platform from which to move
20 forward with and looking to go after a larger customer
21 base.

22 So during the conversations that took place
23 down in Atlanta in the spring of 2004, I had asked the
24 question of -- of viable user count. Also, there was
25 a -- there was a document -- I don't know if it still

Dale Van Leeuwen - July 18, 2012

44

1 exists or not -- but there was a document that
2 thoroughly defined the user range, if you will, for the
3 Business One product, and it fell well within that
4 range. And that document, I believe -- I believe Hodell
5 had from American Express, if I remember correctly, and
6 it was an SAP document.

7 So it was -- it was communicated at that point
8 in time that the system was able to support a fairly
9 substantial user count.

10 I did not do anything past provide that
11 information to Hodell-Natco.

12 Q. Well, let me ask you specifically.

13 Did you raise a question to anyone at SAP
14 during the spring of 2004 meeting as to the appropriate
15 user count for SAP Business One?

16 A. Yes.

17 Q. And what was the response?

18 A. That it supports between three and 500 users.

19 Q. And that was independent -- that statement was
20 made independently of the American Express document that
21 Hodell had provided you?

22 A. That is correct.

23 Q. Do you recall who made the statement to you
24 about Business One was appropriate for 300 [sic] to 500
25 users?

Dale Van Leeuwen - July 18, 2012

45

1 A. It would have been one of two people. It
2 would have been either Ralf Mehnert or Dan Kraus.

3 Q. Do you recall what that -- what their
4 statements, as to SAP Business One user count, were
5 based upon?

6 A. They did say that in Europe that they had
7 customers that were running with over 300 users.

8 Q. Did they give you any names or specific
9 references?

10 A. No, they did not.

11 Q. Did you ask for any?

12 A. No.

13 Q. Why not?

14 A. I took it at face value, based on, you know,
15 their response to me asking the question and their
16 response, as well as the document that Otto had
17 communicated.

18 There were also, as we went through the
19 discovery process of, you know, the application, and I
20 ultimately went to training and so forth, there was
21 marketing material that positioned the different
22 solutions that SAP had at the time and showed, you know,
23 overlap between, for example, Business One and Business
24 All-In-One and the mySAP Suite, and where they were best
25 positioned. And it included basically users and

Dale Van Leeuwen - July 18, 2012

50

1 the sales cycle in helping us determine, you know, that
2 this was the right solution, that, you know, that we
3 were going to be able to, you know, meet Hodell-Natco's
4 requirements.

5 The unknown for SAP, obviously, was the
6 development effort that we had to do from a gap
7 perspective for that particular industry. But that was
8 something that, you know, we took on. Hodell-Natco was
9 aware of, that, you know, that -- that the finished
10 product was not developed, that there was going to have
11 to be development effort to take place, in order to meet
12 their requirements.

13 You know, so that part he could not have
14 anticipated at all. That was an internal thing, but
15 very active in the licensing of SAP Business One and was
16 involved in volumes of users and transactions and -- you
17 know, I want to say that we actually made a trip out to
18 Hodell-Natco. And I cannot remember that to be
19 100 percent the case, but in the back of my mind I
20 believe that we actually made a trip out there.

21 Certainly because -- there were several things
22 that were taking place. American Express had been out
23 there. You know, they were active in doing due
24 diligence as well as to whether or not Business One was
25 the right solution as well.

Dale Van Leeuwen - July 18, 2012

53

1 A. Yes.

2 Q. -- of the software to the customer; is that
3 correct?

4 A. Yes, it is.

5 Q. And was -- with respect to the Hodell-Natco
6 sales cycle, was SAP involved in the discovery process
7 presale?

8 MR. STAR: Objection, form.

9 BY THE WITNESS:

10 A. There's -- there was -- there was not a formal
11 document utilized or supplied by SAP or by ourselves in
12 doing discovery. It's a very dynamic thing. You know,
13 it's a very personal thing typically for a company.

14 There's a framework that we typically use in
15 identifying the requirements of different functional
16 areas. You know, and, again, that process was done.
17 Most of it was drawing off the knowledge that had
18 already been established because of the relationship
19 with SAP, from our perspective. From American Express'
20 perspective, they did not have that relationship with
21 Hodell-Natco, and they had -- they had done the
22 discovery of their own, where they had come in and
23 looked at the requirements of Hodell-Natco and then --
24 and had made their recommendation, also, that this was
25 the solution for them.

Dale Van Leeuwen - July 18, 2012

90

1 Q. Okay. I'm handing you what's been marked
2 previously as Exhibit 35.

3 A. (Reviewing exhibit.)

4 (Discussion off the record.)

5 BY THE WITNESS:

6 A. Okay.

7 Q. Have you ever seen Exhibit 35 before?

8 A. Perhaps.

9 Q. Well, Exhibit 35, I'll represent to you, was
10 produced by LSI in this litigation.

11 A. Okay.

12 Q. Are you familiar with the information that's
13 contained --

14 A. Yes, yeah.

15 Q. -- in Exhibit 35?

16 A. Yes.

17 Q. There's statements in Exhibit 35 with respect
18 to scalability of SAP Business One.

19 A. Okay.

20 Q. What's your understanding of what's meant by
21 scalability?

22 A. A generic term, scalability means the ability
23 to grow with the company as the company grows. It's
24 scalable, from that perspective.

25 Growth may be in volume. It may be in user

Dale Van Leeuwen - July 18, 2012

91

1 count. It can be a lot of things. But it is meant to
2 imply, in my opinion, that the application will grow
3 with the company.

4 Q. Did you, to your knowledge, rely upon
5 information contained within documents like Exhibit 35
6 in determining whether SAP Business One would be an
7 appropriate solution for Hodell-Natco?

8 MR. STAR: Objection to form.

9 BY THE WITNESS:

10 A. I would have to say documents like this. I
11 can't say this specific document, because I don't recall
12 this specific document. But I relied on literature
13 similar to this from -- provided by SAP to make that
14 assessment, yes.

15 Q. Okay. And the statements with respect to
16 scalability and opportunities for growth, is that part
17 of the information contained within documents like
18 Exhibit 35 that you found pertinent to Hodell-Natco's
19 purchasing decision?

20 MR. STAR: Objection to form.

21 BY THE WITNESS:

22 A. I'm going to have to say yes.

23 Q. Handing you what's been marked as Exhibit 37,
24 Exhibit 37 is also a document that was produced by LSI
25 in this litigation.

Dale Van Leeuwen - July 18, 2012

92

1 Do you recall ever seeing Exhibit 37 or
2 something similar to it?

3 A. (Reviewing exhibit.)

4 Again, specifics of this document I can't
5 speak to, but, yes, literature like this provided by
6 SAP, yes, I'm -- this was common.

7 Q. There's a statement on the third page, and
8 it's Bates labeled LSi 422 on the bottom right-hand
9 corner.

10 A. Okay.

11 Q. In the left-hand column it states: SAP
12 Business One is ideally suited for companies with
13 revenue up to \$100 million or with up to 250 employees.

14 A. Okay.

15 Q. You see that statement?

16 A. Mm-hmm (nodding).

17 Q. And is that one of the -- did that form one of
18 the bases that formed your opinion that SAP would be
19 suitable for Hodell, as requiring up to 300 users?

20 MR. STAR: Objection to form.

21 BY THE WITNESS:

22 A. Umm --

23 Q. Let me ask a better question.

24 A. Okay.

25 Q. Did you -- is this piece of information what

Dale Van Leeuwen - July 18, 2012

93

1 led you to believe that Business One would be suitable
2 for a company that was going to be utilizing up to 300
3 users?

4 A. It would have been a document similar to this
5 at the time. I remember these numbers being higher.
6 When we initially initiated conversation with SAP, in
7 regards to scalability to product, these numbers were
8 higher. Like I said, they were -- it was -- it was
9 represented it was between three and 500 users. So
10 this -- this would still fall well within the scale,
11 even this. But as I mentioned, this appears to already
12 have been a revision, and there were continuous
13 revisions associated with marketing material in the
14 scalability of the application.

15 Q. Handing you what's been previously marked as
16 Exhibit 36, which was also produced by LSi in this case.

17 Do you recall seeing this document or
18 something similar to it?

19 A. (Reviewing exhibit.)

20 Yes.

21 Q. Now, there's a statement in Exhibit 36 with
22 respect to five employees or 500. Do you see that
23 statement?

24 A. Yes.

25 Q. Is that one of the statements you're referring

Dale Van Leeuwen - July 18, 2012

94

1 to that led you to believe that the software could
2 support up to 500 users?

3 A. Yes.

4 MR. STAR: Objection to form.

5 BY MR. LAMBERT:

6 Q. And is it your understanding that that was
7 intended, when -- when literature like Exhibit 36
8 references five employees or 500 employees, that is
9 meant to reference users?

10 A. Yes, that would have been my understanding at
11 the time, yes.

12 Q. And why is that? Or what's the basis for your
13 understanding that employees in this context means
14 users?

15 A. It would, in my opinion, be a
16 misrepresentation to say, you know, that I've got a
17 company of a thousand employees and I'm scaling to a
18 company of a thousand employees, but really you're only
19 allowed to use ten users. That would be inappropriate.
20 So, to me, a proper representation would be that users
21 and employees utilizing the system would be synonymous.

22 Q. Would it also be synonymous with concurrent
23 users?

24 MR. STAR: Objection to form.

25 BY MR. LAMBERT:

Dale Van Leeuwen - July 18, 2012

197

1 effort that was going to complete that gap.

2 Q. Just so we have a clear record, am I correct
3 that the gaps are lack of functionality, that Hodell
4 would want to run its business, that just weren't
5 available in the base --

6 A. That is correct.

7 Q. -- Business One application?

8 A. That is correct.

9 Q. And that the purpose of the InFlight
10 development was to fill those gaps for Hodell, correct?

11 A. That is correct; that is correct.

12 Q. You were asked a series of questions about
13 your comment that you believe that Business One was
14 suitable for anywhere from -- a company anywhere from
15 three up to 500 users. I was a little bit unclear as to
16 a portion of your testimony, I'll tell you.

17 And I'm just going to try to clarify it this
18 way.

19 A. Sure.

20 Q. Is it your contention that somebody from SAP,
21 an SAP employee, actually told you that Business One was
22 suitable for a company with three to up to 500 users?

23 A. Yes.

24 Q. Is that your contention?

25 A. Yes.

Dale Van Leeuwen - July 18, 2012

198

1 Q. Who do you believe told you that?

2 A. Dan Carr and Ralf Mehnert, both, at
3 independent times told --

4 Q. Dan Carr?

5 A. Yes -- oh, I'm sorry, not Dan Carr. Dan
6 Kraus.

7 Q. Dan Kraus, Dan Kraus told you it.

8 And you also believe Ralf Mehnert-Meland told
9 you that?

10 A. That is correct.

11 Q. Did they tell you that at the same time?

12 A. No.

13 Q. When did Dan Kraus tell you that?

14 A. I believe that that was at the FKOM meeting
15 that I attended.

16 Q. When was that?

17 A. I don't remember.

18 Q. How many FKOM meetings have you attended?

19 A. Just one, for Business One, during that period
20 of time. I've attended many since then.

21 Q. So there would be one meeting that you'd be
22 thinking of specifically, right?

23 A. Yeah, where Dan communicated that to me.

24 Q. How did he communicate it to you?

25 A. Just in a conversation, as it related to the

Dale Van Leeuwen - July 18, 2012

199

1 market that we were trying to penetrate with our
2 development and our -- with our product specific to the
3 industries that we were going after.

4 Q. Is this a one-on-one conversation, just
5 yourself and Dan Kraus?

6 A. I -- I don't know if Tim Lowe was there or
7 not.

8 Q. And you can't recall when that meeting
9 occurred?

10 A. I don't --

11 Q. You can't recall?

12 A. FKOM usually happens in February.

13 Q. But you --

14 A. So ...

15 Q. Well, I want to be clear. It's an important
16 piece of the case. If you have a recollection of it,
17 I'd like to know it. If you don't, I'd like know that
18 as well.

19 Am I correct, as you sit here today, you have
20 no specific recollection of when this FKOM meeting took
21 place, where you believe Dan Kraus told you Business One
22 can support anywhere up to 500 users; is that correct?

23 A. I cannot tell you the date of the FKOM
24 meeting, that is correct.

25 Q. Can you tell me where that meeting took place?

Dale Van Leeuwen - July 18, 2012

200

1 A. I believe it was Las Vegas.

2 Q. Can you tell me the year?

3 A. It would have been 2004, I believe.

4 Q. You believe this was around February of that
5 year?

6 A. I don't remember. I think it's in one of
7 these documents. If you want, I can review them.

8 Q. Is the FKOM meeting different than the partner
9 meeting, or would that have been the same thing?

10 A. If this is right, it was -- in Las Vegas
11 January 19th, 2004.

12 Q. What document number are you looking at there?

13 MR. HULME: 33.

14 BY MR. STAR:

15 Q. So you believe 33 are the notes that you took.
16 And I believe you said you typed them up on the plane
17 right back from Las Vegas. These were your notes,
18 right?

19 A. Yes.

20 Q. Is there anywhere in here where you say that
21 Business One is suitable for up to 500 users?

22 A. No. I didn't think it pertinent, because it
23 was on marketing material that was handed to me during
24 that meeting.

25 Q. This meeting took place apparently

Dale Van Leeuwen - July 18, 2012

201

1 January 19th through the 21st of 2004; is that right?

2 A. (Nodding.)

3 Q. On which one of those days did you actually
4 have this conversation with Dan Kraus?

5 A. I have no idea.

6 MR. LAMBERT: I'm sorry. I couldn't hear that.

7 THE WITNESS: I have no idea. I don't know which
8 of those days that it took place.

9 BY MR. STAR:

10 Q. Do you recall the setting in which it took
11 place? Was it during a meetings in a hallway? Was it
12 over a dinner? Was it over a drink?

13 A. I believe --

14 Q. Can you recall any of those details?

15 A. I believe we were sitting down and we were
16 talking about -- you know, we were talking about LSi.
17 We were -- and equipment rental. We were talking
18 about -- we were talking about InFlight development,
19 how -- you know, I was really looking for, again, a
20 platform that allowed us to scale well past where we
21 were currently at, as far as customers that we were
22 reaching out to -- which, you know -- and, again, we've
23 talked about the sweet spot that we were selling into.
24 So we wanted to expand our capability, go
25 after larger fastener organizations as well.

Dale Van Leeuwen - July 18, 2012

202

1 Q. How long did the conversation last?

2 A. A half-hour.

3 Q. What time of day was it?

4 A. I have no idea. I don't know if it was before
5 lunch, after lunch. I have no idea.

6 Q. I want to be clear. Is it your sworn
7 testimony here today that you have an express specific
8 recollection of Dan Kraus during a meeting sometime
9 between January 19th and January 21 of 2004 telling you
10 specifically that Business One was suitable for up to
11 500 users and that he used the word users when he spoke
12 to you?

13 A. I -- I believe the conversation was what we
14 were looking to scale to, and I probably used the word
15 users without any type of push back whatsoever.

16 I said, you know, We're looking for a solution
17 that will meet these particular requirements. And
18 before we go and spend the dollars in investment and
19 development, we want to ensure that this is going to be
20 a solution that will support this.

21 Q. Well, earlier your testimony was that Dan
22 Kraus told you this could suit a company from three to
23 500 users. But right now your testimony seems to have
24 changed, and what you're saying is you don't recall
25 Mr. Kraus using the phrase 500 users, but that you think

Dale Van Leeuwen - July 18, 2012

203

1 you may have mentioned it to him, and he just simply
2 didn't object; is that right?

3 MR. HULME: Wait, wait, wait. Objection, form and
4 assuming facts not in evidence.

5 BY THE WITNESS:

6 A. We had an open conversation in regards to what
7 we were looking to accomplish within The IBiS Group, in
8 our development, what LSi was looking to accomplish with
9 their equipment rental module. And the conversation
10 around the scalability of SAP came up from a feature
11 functionality perspective, as well as a perspective of
12 being a solution for subsidiaries of much larger
13 organizations.

14 One of the considerations was Heads and
15 Threads was currently running the SAP Business Suite,
16 you know, could we have subsidiaries of Heads and
17 Threads running Business All-In-One, and we absolutely
18 talked about scalability.

19 Now, scalability, as far as users, we talked
20 about the number of users being between one and 500.
21 Whether I said it or he said it, the conversation was
22 had between the two of us that the SAP system, the
23 Business One system, could support that user level.

24 Q. Right.

25 But as you sit here right now, you can't

Dale Van Leeuwen - July 18, 2012

204

1 pinpoint whether you said 500 users or Mr. Kraus said
2 500 users, right? You just don't recall?

3 A. You're correct, yes, you're correct. We had
4 an open conversation.

5 Q. You also mentioned that -- well, let's stay
6 with Mr. Kraus.

7 At any other time did you have a conversation
8 or any other communication with Mr. Kraus where he told
9 you that Business One was good for up to 500 users?

10 A. Not that I can recall.

11 Q. When I asked you who at SAP told you 500
12 users, you identified Kraus and Mehnert-Meland.

13 A. Yes.

14 Q. Let's talk about Mehnert-Meland.

15 When do you believe -- strike that.

16 How did Mehnert-Meland convey to you that
17 Business One was good for up to 500 users?

18 A. That conversation was a bit different. That
19 conversation -- I mean, I can -- I don't remember the
20 building. I remember where we were standing. We were
21 standing at the top of a set of elevators, and we had
22 approximately a 45-minute conversation in regards to
23 addressing those questions that I had written down as
24 far as feature functionality, to try to identify how
25 much effort would have to go into developing that

Dale Van Leeuwen - July 18, 2012

205

1 solution, that we had talked about the American Express
2 relationship.

3 And I specifically asked the question of
4 scalability as far as user count. The reason was we had
5 just lost a -- an opportunity at Great Lakes Fasteners,
6 which was a fairly significant user count. And I asked
7 him, you know, what is the system able to handle from
8 user perspective? He said between three and 500 users.

9 Q. When exactly did that conversation take place?

10 A. That was in the trip in Atlanta.

11 MR. LAMBERT: I'm sorry. What?

12 THE WITNESS: The trip to Atlanta.

13 BY MR. STAR:

14 Q. That's the late spring of 2004?

15 A. I believe that's correct, yes.

16 Q. And it's your testimony that Mr. Meland
17 specifically told you that Business One could handle up
18 to 500 users?

19 A. Yes.

20 Q. You have a precise recollection of him using
21 the word users, saying 500 users?

22 A. Yes.

23 Q. You were also asked questions about whether
24 you conveyed to Hodell that Business One was suitable
25 for up to 500 users. And I believe your testimony was

Dale Van Leeuwen - July 18, 2012

206

1 that you did tell Otto Reidl that Business One was good
2 for up to 500 users. Am I right about that?

3 A. Otto -- Otto Reidl had approached me with,
4 again, the American Express literature and conversation.
5 He wanted me to verify that, and I believe it was really
6 the result of the going down to Atlanta where I came
7 back and conferred with him that, yes, my understanding
8 is, is that American Express is representing these
9 correctly, the system will support up to 500 users.

10 Q. 500 users?

11 A. Mm-hmm (nodding).

12 Q. So you told that to Otto?

13 A. (Nodding.)

14 Q. Yes?

15 A. Yes.

16 Q. When did you tell Otto?

17 A. After coming back from Atlanta.

18 Q. Sometime in 2004?

19 A. Yes.

20 Q. How did you do it, in person, over the phone?

21 A. Over the phone.

22 Q. Otto testified, to the extent that there was a
23 conversation, a conference call between yourself, folks
24 from American Express, and Otto where he was told that
25 Business One was good for up to 500 users. Do you